

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Ameresco, Inc.

Docket No. EL22-74-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued November 17, 2022)

1. On July 5, 2022, Ameresco, Inc. (Ameresco), on behalf of itself and its current and future subsidiary companies that are holding companies or associated service companies (collectively with Ameresco, the Ameresco Companies) under the Public Utility Holding Company Act of 2005 (PUHCA),¹ filed a petition for declaratory order under Rule 207(a) of the Commission's Rules of Practice and Procedure and sections 366.3(b)(1), 366.3(d), and 366.4(b)(3) of the Commission's regulations,² requesting that the Commission exempt Ameresco from certain of the Commission's regulations under PUHCA (Petition). These regulations, as relevant here, provide for Commission access to the books, accounts, memoranda, and other records of holding companies and associate companies to the extent necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.³ Ameresco states that the Ameresco Companies previously qualified for automatic exemption from these regulations pursuant to 18 C.F.R. § 366.3(a), but will no longer qualify for this automatic exemption, or for the non-traditional utility exemption under 18 C.F.R. § 366.3(b)(2)(ii), because certain new subsidiaries among the Ameresco Companies will engage exclusively in retail energy sales.⁴

2. For the reasons stated below, we grant Ameresco's petition.

¹ 42 U.S.C. § 16451 *et seq.*

² 18 C.F.R. §§ 385.207(a), 366.3(b)(1), 366.3(d), & 366.4(b)(3) (2021).

³ *See* 18 C.F.R. pt. 366 (2021).

⁴ Petition at 1-2.

I. Background

3. Ameresco states that it is a clean technology integrator and renewable energy project developer, owner, and operator in North America and the United Kingdom. It states that in the United States, Ameresco's subsidiary companies own and operate numerous renewable energy assets, which primarily function as distributed generation facilities that serve customers directly or through state-regulated net-metering programs. Ameresco states that it is a publicly traded company listed on the New York Stock Exchange under the symbol AMRC.⁵

4. Ameresco explains that to date, the Ameresco Companies have been holding companies solely with respect to electric utility companies that are (i) owners or operators of qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978,⁶ as amended, (ii) exempt wholesale generators (EWGs) under PUHCA, and/or (ii) foreign utility companies (FUCOs) under PUHCA. Ameresco states that as a result, the Ameresco Companies have been entitled to the automatic exemption from federal regulation under PUHCA pursuant to 18 C.F.R. § 366.3(a).⁷

5. Ameresco states that other than Chesapeake Beach BESS LLC (Chesapeake Beach),⁸ none of the public utility subsidiaries of the Ameresco Companies currently has any jurisdictional rates because they are eligible for the QF exemption from sections 205 and 206 of the Federal Power Act (FPA)⁹ pursuant to 18 C.F.R. § 292.601(c)(1) (2021). Further, Ameresco states that none of the Ameresco Companies or any of their affiliates has captive customers, owns Commission-jurisdictional transmission facilities (other than limited and discrete generator interconnection facilities), or provides

⁵ *Id.* at 2-3.

⁶ 16 U.S.C. § 2601 *et seq.*

⁷ Petition at 3. Section 366.3(a) of the Commission's regulations states that any person that is a holding company solely with respect to QFs, EWGs, or FUCOs will be exempt from the requirements of §§ 366.2 and 366.21 and any associated service company will be exempt from the requirements of §§ 366.2, 366.22, and 366.23.

⁸ Ameresco states that Chesapeake Beach will own and operate a 1 megawatt stand-alone battery energy storage system and is an EWG. *Id.* n.5 (citing Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG22-79-000 (filed Apr. 1, 2022)). Ameresco states that Chesapeake Beach has obtained market-based rate authorization from the Commission. *Id.* (citing *Chesapeake Beach BESS LLC*, Docket No. ER22-1544-000 (May 26, 2022) (delegated order)).

⁹ 16 U.S.C. §§ 824d, 824e.

Commission-jurisdictional transmission services. Ameresco also states that the Ameresco Companies do not have any natural gas company subsidiaries.¹⁰

6. Ameresco explains that certain Ameresco Companies (Storage Subsidiaries) intend to develop, own, and operate grid-charged battery energy storage systems (Storage Systems) in the United States.¹¹ Ameresco states that the Storage Systems may be co-located with renewable generation facilities that supply a portion of their charging energy or stand-alone projects. Ameresco states that the Storage Systems would be eligible for QF status to the extent that renewable resources are the primary energy source of the projects. However, Ameresco states that because the Storage Subsidiaries will procure charging energy from the grid, the Storage Systems are not expected to satisfy the fossil fuel use restrictions for QFs.¹²

7. Ameresco states that the Storage Subsidiaries that sell electric energy at wholesale (Jurisdictional Storage Subsidiaries) will obtain market-based rate authorization and therefore will be Commission-jurisdictional utilities. According to Ameresco, to the extent that the Jurisdictional Storage Subsidiaries engage exclusively in wholesale power sales, they may operate as EWGs under PUHCA. However, Ameresco explains that all or a portion of the output of certain Storage Systems will be sold at retail to end-use customers, and that the Storage Subsidiaries that engage in sales of electric energy at retail are not eligible for EWG status.¹³

8. Ameresco states that any Storage Subsidiaries that engage exclusively in retail power sales (the Non-Jurisdictional Storage Subsidiaries) will not be Commission-jurisdictional utilities. Ameresco further states that, but for the Non-Jurisdictional Storage Subsidiaries, the Ameresco Companies that are holding companies with respect to the Storage Subsidiaries would be eligible for the “non-traditional utility” exemption

¹⁰ Petition at 3.

¹¹ Ameresco states that certain Ameresco Companies will own, control, or hold with power to vote, 10% or more of the outstanding voting securities of the Storage Subsidiaries, which will directly own and operate the Storage Systems. *Id.* at 5.

¹² *Id.* at 3-4.

¹³ *Id.* at 4.

from regulation under PUHCA set forth in 18 C.F.R. § 366.3(b)(2)(ii).¹⁴ However, Ameresco explains, because that exemption is available only when the non-traditional utility is a Commission-jurisdictional utility, the Ameresco Companies cannot rely on this exemption.¹⁵

9. Given that the Storage Subsidiaries that are not QFs or EWGs will cause the Ameresco Companies to lose their automatic exemption from federal regulation under PUHCA pursuant to 18 C.F.R. § 366.3(a), Ameresco submits its petition to obtain an individual exemption for the Ameresco Companies.

II. Petition

10. In its petition, Ameresco requests that the Commission declare it exempt from sections 366.2, 366.21, 366.22, 366.23 of the Commission's regulations¹⁶ pursuant to section 366.3(b)(1) of the Commission's regulations.¹⁷

11. Ameresco explains that the requirements of sections 366.2, 366.21, 366.22, and 366.23 have not previously been applicable to the Ameresco Companies because all the public utility companies in the Ameresco holding company system have been owners or operators of QFs, EWGs, and/or FUCOs, which has allowed the Ameresco Companies to qualify for an automatic exemption pursuant to section 366.3(a) of the Commission's regulations. However, Ameresco states that the Ameresco Companies will no longer

¹⁴ 18 C.F.R. § 366.3(b)(2)(ii) states that: "The Commission has determined that the following persons and classes of transactions satisfy the requirements of paragraph (b)(1) of this section [...] (ii) Commission-jurisdictional utilities that have no captive customers and that are not affiliated with any jurisdictional utility that has captive customers, and that do not own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services and that are not affiliated with persons that own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services, and holding companies that own or control only such utilities[.]"

¹⁵ *Id.* at 4-5.

¹⁶ 18 C.F.R. §§ 366.2, 366.21, 366.22, 366.23. Section 366.2 provides for Commission access to books and records of a holding company and each of its associate companies. Section 366.21 establishes accounts and records-related requirements for holding companies. Section 366.22 establishes accounts and records-related requirements for holding company service companies. Section 366.23 establishes reporting requirements for holding company centralized service companies.

¹⁷ 18 C.F.R. § 366.3(b)(1).

qualify for a categorical exemption set forth in the Commission's regulations by virtue of their ownership of the Storage Subsidiaries that are not EWGs, owners or operators of QFs, or Commission-jurisdictional non-traditional utilities.¹⁸

12. Ameresco states that the Commission has determined that it is appropriate to waive sections 366.2, 366.21, 366.22, and 366.23 for persons whose books and records are not relevant to the jurisdictional rates of a public utility or natural gas company. Ameresco argues that the Ameresco Companies meet this standard, and it is therefore appropriate to grant Ameresco's exemption request.¹⁹

13. Ameresco first states that there are no natural gas companies in the Ameresco holding company system, so the books and records of the Ameresco Companies have no bearing on the jurisdictional rates of any natural gas company.²⁰

14. Next, Ameresco states that all the public utilities in the Ameresco holding company system are EWGs or owners or operators of QFs, except for the Jurisdictional Storage Subsidiaries that make retail energy sales. Ameresco states that pursuant to section 1266(a) of PUHCA and section 366.3(a) of the Commission's regulations, holding companies with respect to QFs, EWGs, and/or FUCOs are automatically entitled to an exemption from federal regulation under PUHCA – i.e., the books and records of such holding companies have been deemed not relevant to the jurisdictional rates of public utilities that are EWGs or owners or operators of QFs. Accordingly, Ameresco argues that the Ameresco Companies' books and records are not relevant to the jurisdictional rates of the public utilities in the Ameresco holding company system that are EWGs or owners or operators of QFs.²¹ Additionally, Ameresco states that all the public utilities in the Ameresco holding company system with jurisdictional rates will have only market-based rates, and the books and records of the Ameresco Companies are not relevant to market-based rates, which are negotiated based on market conditions and not based on the cost of service. Ameresco explains that none of the public utilities in the

¹⁸ Petition at 6. We note that Ameresco states that “the Ameresco Companies will no longer qualify for a categorical exemption set forth in the Commission's regulations by virtue of their ownership of the *Non-Jurisdictional* [Storage] Subsidiaries that are not EWGs, owners or operators of QFs, or Commission-jurisdictional non-traditional utilities.” *Id.* at 6 (emphasis added). However, we understand Ameresco to be referring to the Storage Subsidiaries that are not EWGs, owners or operators of QFs, or Commission-jurisdictional non-traditional utilities.

¹⁹ *Id.* at 7.

²⁰ *Id.*

²¹ *Id.*

Ameresco holding company system will have any jurisdictional cost-based rates or captive ratepayers that require protection under PUHCA.²²

15. Ameresco also asserts that the Commission has determined, with the existence of the non-traditional utility exemption in 18 C.F.R. § 366.3(b)(2)(ii), that the books and records of holding companies with respect to Commission-jurisdictional non-traditional utilities are not relevant to any jurisdictional rates. Ameresco states that all of the public utility subsidiaries of the Ameresco Companies, including the Jurisdictional Storage Subsidiaries, meet the criteria for such non-traditional utilities – i.e., they have no captive customers and are not affiliated with any Commission-jurisdictional utility that has captive customers, they do not own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services, and they are not affiliated with persons that own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services.²³

16. Ameresco argues that while the Non-Jurisdictional Storage Subsidiaries are not public utilities, they also meet the criteria for non-traditional utilities and should be treated as such. Ameresco states that the Commission has found that subsidiary companies that could be QFs if they satisfied the QF fuel use criteria “meet the criteria for non-traditional utilities under section 366.3(b)(2)(ii), and thus satisfy the requirements of section 366.3(b)(1)(i).”²⁴ Ameresco asserts that the Non-Jurisdictional Storage Subsidiaries would be eligible for QF status to the extent that their Storage System is charged from renewable resources. Further, because the Non-Jurisdictional Storage Subsidiaries have no jurisdictional rates, Ameresco argues that it is neither necessary for the protection of jurisdictional ratepayers nor useful to the Commission to require the Ameresco Companies to comply with the requirements of 18 C.F.R. §§ 366.2, 366.21, 366.22, and 366.23.²⁵

17. Ameresco concludes that, given that the books and records of the Ameresco Companies are not relevant to any jurisdictional rates and the Storage Subsidiaries do not raise concerns with respect to any jurisdictional rates, there is no need to subject the Ameresco Companies to additional PUHCA obligations as a result of the Storage Subsidiaries. Ameresco therefore requests that the Commission grants the Ameresco Companies an individual exemption of the books and records and accounting,

²² *Id.* at 8.

²³ *Id.*

²⁴ *Id.* (citing *Bloom Energy Corp.*, 148 FERC ¶ 61,196, at P 13 (2014)).

²⁵ *Id.* at 8-9.

record-retention, and reporting requirements of 18 C.F.R. §§ 366.2, 366.21, 366.22, and 366.23.²⁶

III. Notice

18. Notice of Ameresco's filing was published in the *Federal Register*,²⁷ with interventions or protests due on or before August 4, 2022. None was filed.

IV. Discussion

19. Section 366.3(b)(1)(i) of the Commission's regulations authorizes the Commission to grant exemptions from 18 C.F.R. §§ 366.2, 366.21, 366.22, and 366.23 if it "finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company."²⁸

20. Ameresco represents that the Ameresco Companies have previously been entitled to automatic exemption from federal regulation under PUHCA pursuant to 18 C.F.R. § 366.3(a) because the Ameresco Companies have been holding companies solely with respect to electric utility companies that are QFs, EWGs, and/or FUCOs.²⁹ We understand that certain Ameresco Companies (the Storage Subsidiaries) intend to develop, own, and operate Storage Systems in the United States, and this will result in the Ameresco Companies no longer qualifying for exemption pursuant to section 366.3(a) because: (1) the Storage Subsidiaries will procure charging energy from the grid, so the Storage Systems are not expected to satisfy the fossil fuel requirements for QFs;³⁰ (2) all or a portion of the output of certain Storage Systems will be sold at retail to end-use customers, so that the Storage Subsidiaries that engage in sales of electric energy at retail would not be eligible for EWG status;³¹ and (3) the Storage Systems will be located in the United States, so the Storage Subsidiaries will not be FUCOs.³²

²⁶ *Id.* at 9.

²⁷ 87 Fed. Reg. 42,167 (July 14, 2022).

²⁸ 18 C.F.R. § 366.3(b)(1)(i).

²⁹ Petition at 3.

³⁰ *Id.* at 3-4.

³¹ *Id.* at 4.

³² *See* 18 C.F.R. § 366.1.

21. Ameresco represents that the Ameresco Companies that are holding companies with respect to the Storage Subsidiaries would be eligible for the non-traditional utility exemption from federal regulation under PUHCA set forth in 18 C.F.R. § 366.3(b)(2)(ii), which states that a person that is a holding company with respect to “Commission-jurisdictional utilities that have no captive customers and that are not affiliated with any jurisdictional utility that has captive customers, and that do not own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services and that are not affiliated with persons that own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services, and holding companies that own or control only such utilities,” satisfies the requirements of 366.3(b)(1).³³ However, we understand that because certain of the Storage Subsidiaries (the Non-Jurisdictional Storage Subsidiaries) will engage exclusively in retail power sales, the Ameresco Companies that are holding companies with respect to the Non-Jurisdictional Storage Subsidiaries cannot rely on this exemption because the exemption is only available when non-traditional utilities only own “Commission-jurisdictional” utilities.³⁴

22. Based on the representations made by Ameresco, we find, pursuant to section 366.3(b)(1) of the Commission’s regulations, that the Ameresco Companies’ books, accounts, memoranda, and other records are not relevant to the jurisdictional rates of Ameresco Companies, and thus it is appropriate to exempt the Ameresco Companies from the requirements of sections 366.2, 366.21, 366.22, and 366.23. We find that the Non-Jurisdictional Storage Subsidiaries that could be QFs if they used renewable resources as fuel meet the criteria for non-traditional utilities under section 366.3(b)(2)(ii), and thus satisfy the requirements of section 366.3(b)(1)(i). Ameresco represents that none of the Ameresco Companies, including the Storage Subsidiaries, or any of their affiliates has captive customers, owns Commission-jurisdictional transmission facilities (other than limited and discrete generator interconnection facilities), or provides Commission-jurisdictional transmission services.³⁵ These

³³ 18 C.F.R. § 366.3(b)(2)(ii).

³⁴ Petition at 4-5; 18 C.F.R. § 366.3(b)(2)(ii).

³⁵ Petition at 3, 4-5.

representations support a finding that these subsidiaries are non-traditional utilities under section 366.3(b)(2)(ii), and thus satisfy the requirements of section 366.3(b)(1)(i).³⁶

23. Based on the information and representations contained in the Petition, we find that Ameresco and its current and future subsidiaries are holding companies solely with respect to QFs, EWGs, FUCOs, and non-traditional utilities, as described above, and thus are exempt from sections 366.2, 366.21, 366.22, 366.23 of the Commission's regulations.

The Commission orders:

(A) The petition for declaratory order is hereby granted, as discussed in the body of this order.

(B) In accordance with the requirements of the Commission's regulations, Ameresco is required to notify the Commission of any material change in facts that may affect its exemption. Ameresco and its subsidiaries may not rely upon the exemption if they fail to conform with any material facts or representations presented in Ameresco's petition.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁶ *Bloom Energy Corp.*, 148 FERC ¶ 61,196 at P 13 (finding that subsidiaries that could be QFs if they used gas from landfills or biomass facilities instead of natural gas as fuel meet the criteria for non-traditional utilities under section 366.3(b)(2)(ii), and thus satisfy the requirements of section 366.3(b)(1)(i)). *See also IIF US Holding 2 GP, LLC*, 173 FERC ¶ 61,234, at P 28 (2020) (noting that, in several recent petitions for exemptions from the PUHCA regulations, the Commission "relied on, at least in part, the absence of captive customers within the holding company system to grant exemptions from and waivers of PUHCA's books and recordkeeping requirements").